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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

MOSS BROS., INC.,

Petitioner,

v.

THE SUPERIOR COURT OF  
SAN BERNARDINO COUNTY,

Respondent;

LETICIA GAMA,

Real Party in Interest.

E050197

(Super.Ct.No. CIVDS915868)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. W. Robert Fawke,  
Judge. Petition granted.

Tharpe & Howell, Christopher S. Maile, Eric B. Kunkel, and Soojin Kang, for  
Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest.

In this matter, we have reviewed the petition and considered the record. Although we have invited real party in interest to file an informal response, she has not done so. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

### FACTUAL AND PROCEDURAL BACKGROUND

Real party in interest filed an action against petitioner Moss Bros., Inc. on November 4, 2009. On the same date, the case was assigned to Judge W. Robert Fawke in Department S38 for all purposes. Notice of this case assignment was mailed by the court clerk, also on November 4, 2009.

Real party in interest filed a first amended complaint on December 18, 2009. A copy of this amended pleading was served by mail on petitioner on December 16, 2009.

Petitioner filed a peremptory challenge, along with a motion to compel arbitration, on January 21, 2010. This was its first filing in the case.

The minute order notes the dates when petitioner was served with the original and amended complaints, and reflects that the peremptory challenge was rejected as untimely.

### DISCUSSION

When a case has been assigned for all purposes to a judge, a party has 10 days from the date of his/her first appearance to file a peremptory challenge under Code of Civil Procedure section 170.6 or 15 days in a fast track case. (Gov. Code, § 68616; *La Seigneurie U.S. Holdings, Inc. v. Superior Court* (1994) 29 Cal.App.4th 1500.)

The trial court apparently believed that the 10 day period began on the date Moss Bros. was served. This was error. The word appearance as it is used in Code of Civil Procedure section 170.6 means “general appearance.” (*La Seigneurie U.S. Holdings, Inc., supra*, 29 Cal.App.4th at p. 1504.)

Moss Bros had not made any appearance in the case—general or special—prior to filing the challenge. Its challenge was therefore timely.

#### DISPOSITION

Let a peremptory writ of mandate issue directing the Superior Court of San Bernardino County to set aside its order denying petitioner’s motion for disqualification of Judge W. Robert Fawke, and to issue a new order granting this motion.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

Petitioner is to bear its own costs.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

MILLER

J.